

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ACE V. WHITENER,

Petitioner,

v.

TIM GARRETT, *et al.*,

Respondents.

Case No. 3:22-cv-00528-ART-CSD

ORDER

This action is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by Ace V. Whitener, who is incarcerated at Nevada's Lovelock Correctional Center. On November 30, 2022, Whitener filed an application to proceed *in forma pauperis* (ECF No. 1), a habeas petition (ECF No. 1-1), exhibits in support of the petition (ECF No. 1-5), a memorandum of points and authority in support of the petition (ECF No. 1-2), a motion for appointment of counsel (ECF No. 1-3), and a letter to the Clerk of the Court regarding payment of the filing fee (ECF No. 1-4). The Court has placed the exhibits and the memorandum of points and authorities under seal. (*See* ECF No. 3.)

The information provided by Whitener in his application to proceed *in forma pauperis* (ECF No. 1) shows that he is able to pay the filing fee for this action, and, additionally, Whitener's letter to the Clerk (ECF No. 1-4) indicates that he intends to pay the filing fee. The Court will, therefore, deny the application to proceed *in forma pauperis*, but will not set a deadline for Whitener to pay the filing fee until after appointed counsel appears for him.

State prisoners applying for habeas corpus relief are not entitled to appointed counsel unless the circumstances indicate that appointed counsel is necessary to prevent due process violations. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986) (citing *Kreiling v. Field*, 431 F.2d 638, 640 (9th Cir. 1970))

(per curiam)). The court may, however, appoint counsel at any stage of the proceedings if the interests of justice so require. See 18 U.S.C. § 3006A; see also Rule 8(c), Rules Governing § 2254 Cases; *Chaney*, 801 F.2d at 1196. Whitener's petition indicates that he is serving a sentence of life in prison with the possibility of parole after 35 years, and it appears that the petition raises issues that may be relatively complex, such that the interests of justice call for appointment of counsel. The Court will grant Whitener's motion for appointment of counsel and will appoint the Federal Public Defender for the District of Nevada (FPD) to represent him.

The Court has examined Whitener's petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts and determines that it merits service upon the Respondents. The Court will order the petition served upon the Respondents, and will direct the Respondents to appear, but will not require any further action on the part of the Respondents at this time.

It is therefore ordered that Petitioner's Application to Proceed *in Forma Pauperis* (ECF No. 1) is denied.

It is further ordered that the Clerk of the Court is directed to separately file the Petition for Writ of Habeas Corpus (ECF No. 1-1) and the Motion for Appointment of Counsel (ECF No. 1-3).

It is further ordered that Petitioner's Motion for Appointment of Counsel (ECF No. 1-3) is granted. The Federal Public Defender for the District of Nevada (FPD) is appointed to represent the Petitioner. If the FPD is unable to represent the Petitioner, because of a conflict of interest or for any other reason, alternate counsel will be appointed. In either case, counsel will represent the Petitioner in all federal court proceedings relating to this matter, unless allowed to withdraw.

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1 It is further ordered that the Clerk of the Court is directed to electronically  
2 serve upon the FPD a copy of this order, together with a copy of the Petition for  
3 Writ of Habeas Corpus (ECF No. 1-1).

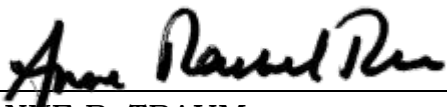
4 It is further ordered that the FPD will have 30 days from the date of this  
5 order to file a notice of appearance, or to indicate to the Court its inability to  
6 represent the Petitioner in this case.

7 It is further ordered that the requirement that Petitioner pay the filing fee  
8 for this action is suspended. The Court will set a deadline for payment of the filing  
9 fee after counsel appears for the Petitioner.

10 It is further ordered that the Clerk of the Court is directed to add Aaron  
11 Ford, Attorney General of the State of Nevada, as counsel for Respondents and to  
12 provide Respondents an electronic copy of all items previously filed in this case  
13 by regenerating the Notice of Electronic Filing to the office of the Attorney General  
14 only.

15 It is further ordered that Respondents will have 30 days from the date of  
16 this order to appear in this action. Respondents will not be required to respond  
17 to the habeas petition at this time.

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19 DATED THIS 2nd day of December, 2022.

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21 ANNE R. TRAUM  
22 UNITED STATES DISTRICT JUDGE  
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